STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Association of Firefighters, Local 413, AFL-CIO, CLC,	)	
Charging Party,	)	
and	)	Case No. S-CA-15-030
City of Rockford	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On September 12, 2014, the International Association of Firefighters, Local 413 (Union) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board alleging that the City of Rockford (Employer) violated Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315, as amended (Act) by refusing to include language on medical certification in the parties' successor collective bargaining agreement. The Board's Executive Director issued a Complaint for Hearing and the matter was initially assigned to Administrative Law Judge Kelly Coyle. The case was later reassigned to Administrative Law Judge Anna Hamburg-Gal (ALJ), who conducted a hearing on January 6, 2016.

On August 9, 2016, the ALJ issued a Recommended Decision and Order (RDO) concluding that Respondent's refusal to include medical certification language constituted a repudiation of the collective bargaining process in violation of Sections 10(a)(4) and (1) of the Act. Respondent and Charging Party filed timely exceptions and responses, respectively.

After reviewing the RDO, exceptions, responses, and the record, we reject the ALJ's findings and conclusions contained in her RDO and instead find as follows:

The Employer and Union were parties to a collective bargaining agreement (CBA) for a three year term set to expire on December 31, 2011. Article 13, Section 1, of the CBA gives the Employer authority to issue new, or to change, Fire Department rules and regulations as long as the Employee posts the new or changed rule or regulation and gives the Union President notice seven calendar days in advance of the rule taking effect. Under this same provision of the CBA, the Union is entitled to grieve the reasonableness of the new or changed rule. Article 9 of CBA contains several provisions regarding sick leave. Those provisions relate to the definition and accrual of sick leave in addition to severance payments for unused sick leave.

The Employer maintains a sick leave policy within its Fire Department rules and regulations. This sick leave policy sets forth procedures for requesting sick leave in addition to the number of consecutive days of sick leave that trigger a requirement by employees to provide the Employer with a certification from a physician.

This case stems from a memorandum dated August 18, 2011, from Fire Chief Derek Bergsten to all Fire Department Personnel announcing changes to the Employer's existing sick policy. The Employer added a new section that required employees to provide a certification from a physician upon return from sick leave if the employee had already taken two sick leaves within the calendar year. The memorandum further stated that the changes would be effective January 1, 2012. The Union filed a grievance challenging the reasonableness of the changes to the sick leave policy pursuant to Article 13, Section 1 of the parties' collective bargaining agreement.

The parties had several discussions related to the Employer's changes to its sick leave policy and the Union's grievance over it. Sometime after these discussions, the Union noted that the parties were entering into negotiations and suggested that they discuss the changes to the sick leave policy during negotiations for the successor CBA.

During the October 26, 2011, bargaining session for the successor CBA, the Employer proposed that the Union adopt the Employer's position on the changes to the Employer's sick leave policy and withdraw its grievance. The Union rejected this proposal. The parties continued with negotiations discussing other topics. At some point the parties returned to discussing the Employer's sick leave policy and on July 11, 2012, ultimately reached and signed off on a tentative agreement (TA) that included, in addition to one other unrelated item, language on medical certification. The parties signed off on several other tentative agreements before proceeding to interest arbitration on the remaining outstanding issues. The interest arbitration award incorporated all the parties' tentative agreements including the July TA.

Section 10(a)(4) of the Act provides, in part, that a public employer's refusal to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit is an unfair labor practice. 5 ILCS 315 10(a)(4). When an employer's conduct demonstrates a disregard for the collective bargaining process, evidences an outright refusal to abide by a contractual term, or prevents the grievance process from working, that conduct constitutes repudiation and violates Sections 10(a)(4) and (1) of the Act.

The ALJ found that the Respondent's refusal to include the medical certification language in the parties' successor CBA constituted a repudiation of the collective bargaining process in violation of the Act. In making this finding, the ALJ first considered the issue of whether there was a meeting of the minds to include the medical certification language in the successor CBA. Using Board precedent, the ALJ analyzed the parties' objective conduct to conclude that the parties did indeed reach a "meeting of the minds." Specifically, the ALJ found that the Employer's statements regarding its rights and obligations under the 2009-2012 collective bargaining agreement, the Employer's offer to bargain sick leave in the successor agreement, its solicitation

of contract proposals from the Union on medical certification, and the Union's statements on the day of agreement supported her determination. The ALJ also found that the Employer's conduct before the interest arbitrator confirmed that the parties had reached a meeting of the minds.

We, however, reject the ALJ's findings and find that while the parties agreed to the medical certification language itself, there was no evidence that the parties agreed on *where* the language would appear.

Under Board precedent, to have a meeting of the minds, parties must truly assent to the same things in the same sense on all the agreement's essential terms and conditions. Tri-State Fire Protection Dist., 31 PERI ¶ 78 (IL LRB-SP 2014); Chicago Transit Auth., 29 PERI ¶ 156 (IL LRB-LP 2013); Recorder of Deeds, 28 PERI ¶ 14 (IL LRB-LP 2011); see for example City of Chicago, 5 PERI 3006 (no meeting of the minds because the parties did not reach agreement on all substantive issues of tentative grievance settlement due to good faith mistake of Respondent's representative).

This is consistent with the approach adopted by the National Labor Relations Board (NLRB). When an ambiguity exists over an essential term of an agreement "for which *neither party* is to blame, or for which *both parties* are equally to blame, and the parties differ in their understanding," there is no meeting of the minds. Hempstead Park Nursing Home, 341 NLRB 321 (2004) (quoting Meat Cutters Local 120 (United Employers, Inc.), 154 NLRB 16 (1965) (emphasis in original); Liberty Pavilion Nursing Home 259 NLRB 177 (1982); B. F. Goodrich Chemical Co. 232 NLRB 399 (1977); Capital Packing Co., 212 NLRB 98 (1974); Tex-Cal Land Mgmt., Inc. v. Agric. Labor Relations Bd., 135 Cal. App. 3d 906, 916–17, 185 Cal. Rptr. 588, 594 (Ct. App. 1982). Stated differently, "when the terms of a contract are ambiguous, and the parties

attach different meanings to the ambiguous terms, a 'meeting of the minds' is not established." Hempstead, *supra*.

Here, we find the parties did not reach a meeting of the minds on *all* the essential terms and conditions of the July TA for both parties differed as to where the medical certification language would be included, with both parties adhering to its own reasonable interpretation of where it would be placed. Although we find the parties reached a meeting of the minds on the medical certification language itself, we find both parties were not of the same mind as to *where* the medical certification language would be included, which in this case is an essential term of the agreement. We find that while the evidence demonstrates that the Union was reasonable in its belief that the medical certification language would be included in the parties' collective bargaining agreement, it was also reasonable for the Employer to believe that the medical certification language was to be included in the Employer's sick leave policy contained in its rules and regulations.

The Employer announced a change in its sick leave policy contained in its rules and regulations pursuant to Article 13.1 of the parties' CBA. The Union filed a grievance to challenge the reasonableness of the changes as it was privileged to do under that same Article of the CBA. There was testimony to indicate that it was not unusual for the parties to resolve grievances as part of collective bargaining negotiations. Indeed, there was evidence it was the Union that initially suggested discussing resolving its grievance over the changes to the Employer's sick leave policy during the negotiations for a successor collective bargaining agreement.

The ALJ's finding that the Employer's statements regarding its rights and obligations under the 2009-2012 collective bargaining agreement and the Employer's offer to bargain over sick leave in the successor agreement supported the conclusion that the Employer was aware that the medical

certification language would be included in the successor CBA was based on her finding that the January 13, 2012 letter to the Union by Chief Bergsten evidenced the Employer's understanding that the Union could secure a binding change to medical certification language only by its inclusion in the successor CBA. We reject this finding and find instead that in the January 13, 2012, letter, the Employer was merely stating its rights under the existing Article 13.1 of the parties' collective bargaining agreement to change its sick leave policy in its rules and regulations and that the Union would have to modify the CBA which currently gave the Employer the right change the Employer's sick leave policy if it so desired. We find that the letter, together with evidence that the Union initially suggested discussing resolving its grievance during CBA negotiations, was intended to reassert the Employer's position regarding the grievance the Union filed regarding changes to the sick leave policy, and not an invitation to bargain as the ALJ concluded.

The ALJ's finding that the Employer's solicitation of contract proposals from the Union on medical certification was based on her giving credit to only part of the Employer's Chief Negotiator's, Patrick Hayes, testimony regarding his requests to the Union for proposals. Hayes was asked if he had ever implored the Union to draft contract language on the sick leave policy and he responded in the affirmative. The questioner attempted to clarify that his earlier question was intended to mean draft language for the collective bargaining agreement to which Hayes responded in the negative. The ALJ only credited Hayes's first response reasoning that Hayes's first response did not need clarification because the questioner's use of "contract" was unambiguous even though the questioner clarified that contract meant collective bargaining agreement.

We reject the ALJ's finding and credit the entire line of questioning because Hayes's response to the line of questions is consistent with the rest of Hayes's own testimony and testimony

of other witnesses that the Employer believed the language the parties were discussing was to be included in the Employer's sick leave rules and regulations and not the collective bargaining agreement. Specifically, Chief Bergsten testified that the Employer requested the Union provide alternatives or suggestions in place of the Employer's changes and was willing to work with the Union to come up with changes to its *sick leave rules and regulations* that would be acceptable to both sides.

We also reject the ALJ's finding regarding the Union's statements on the day of agreement. The ALJ found that Margaret Angelucci's statements to the Respondent's Chief Negotiator that the Union proposed the medical certification language to "lock it down" expressed the Union's desire to have the medical certification language included in the successor CBA. We, however, find Ms. Angelucci's statement regarding "lock it down" together with her admission that she did not make any "overt" statements that the Union was proposing to include the medical certification language in the collective bargaining agreement are further evidence that it was reasonable for the Employer to believe that the language was to be included in the Employer's sick leave policy contained in its rules and regulations and that there was no meeting of the minds regarding where the medical certification language would be placed.

We also reject the ALJ's finding that the Employer's conduct before the interest arbitrator confirmed that the parties had reached a meeting of the minds. Although the parties stipulated before the arbitrator to incorporate all the tentative agreements into the award, there was evidence that not all the proposals that were the subject of tentative agreements were included in the CBA. We find this to be sufficient evidence to show that the Employer reasonably believed the medical certification language was to be included in the Employer's sick leave policy contained in its rules and regulations rather than in the parties' successor collective bargaining agreement.

The ALJ also failed to adequately consider the manner in which the Employer presented its "Proposal No. 10". We find the document in its entirety provides objective evidence that the Employer reasonably believed that it was discussing resolving the grievance and unfair labor practice charge over the changes to its *sick leave policy*. The Employer's October contract proposals contained fourteen separate proposals, five of which were flagged as either new articles or new sections. "Proposal No. 10" was not flagged to be a new article or a new section of the successor CBA which we find further evidence demonstrating that the Employer was not proposing new language to the CBA. Similarly, the July11, 2012, proposal from the union contained the medical certification language but nowhere in the proposal does it expressly indicate that the medical certification language was to be a new article or a new section of the CBA. This together with the lack of any specific statements by the Union or the Employer as to where the medical certification language was to be included, in the successor CBA or in the Employer's sick leave policy, leads us to find that both sides had a different view of where the medical certification language would be included and failed specifically express that to each other.

It appears that these circumstances could have been avoided had both parties exercised more prudence and specificity in articulating its proposals to the other. We hope that if and when the parties return to the bargaining table that they do so. As both sides share the blame in failing to expressly indicate to the other where the medical certification language would be placed throughout the process, we find the parties failed to reach a meeting of the minds on this essential term of the tentative agreement. Because there was no meeting of the minds, we find that there was no agreement to include the medical certification language in the parties' successor collective bargaining agreement. Without an agreement, the Employer's conduct does

not constitute a repudiation of the collective bargaining process, and thus, does not violate Sections 10(a)(4) and (1) of the Act.

For all the reasons stated above, the unfair labor practice charge is dismissed in its entirety.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

Decision made at the State Panel's public meeting held in Chicago and Springfield, Illinois (via video conferencing) on January 10, 2017; written decision approved and issued on April 11, 2017.

STATE OF ILLINOIS
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STATE PANEL

International Association of Firefighters, Local 413,	)	
Charging Party	)	
	)	Case No. S-CA-15-030
and	)	
City of Rockford,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On September 12, 2014, the International Association of Firefighters, Local 413 (Charging Party or Union) filed a charge with the Illinois Labor Relations Board's State Panel (Board) alleging that the City of Rockford (Respondent or City) engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2014), as amended. The charge was investigated in accordance with Section 11 of the Act. On January 27, 2015, the Board's Executive Director issued a Complaint for Hearing. A hearing was conducted on January 6, 2016, in Chicago, Illinois, before ALJ Kelly Coyle, at which time the Union presented evidence in support of the allegations and all parties were given an opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally, and to file written briefs.

In April 2016, the Board administratively transferred the case to me. I contacted the parties to determine whether they had any objection to a resolution of the case based upon the existing record. Neither party expressed an objection. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. The Respondent has, at all times material, been a public employer within the meaning of Section 3(o) of the Act.
2. The Charging Party has, at all times, material, been a labor organization within the meaning of Section 3(i) of the Act.
3. The Charging Party represents all uniformed fire department personnel.
4. The parties' 2009-2012 collective bargaining agreement has a stated expiration date of December 31, 2011 with a provision that it "shall remain in full force and effect after any expiration date while negotiations or Resolution on Impasse Procedure are continuing for a new Agreement of part thereof between the parties."
5. On or about August 2011, the parties began negotiations for a successor collective bargaining agreement, and on October 26, 2011, the parties exchanged initial proposals.
6. In or about August 18, 2011, the Fire Chief announced that the Respondent intended to make a change to the sick leave policy.
7. On or about August 23, 2011, the Charging Party filed a grievance over the change to the sick leave policy.
8. On or about January 1, 2012, the Respondent implemented the change to the sick leave policy.
9. On or about January 10, 2012, the Charging Party filed an unfair labor practice charge over the change to the sick leave policy.
10. On or about July 11, 2012, the parties reached an agreement regarding "Medical Certification" language.
11. The parties' July 11, 2012 agreement required the Charging Party to withdraw the grievance and unfair labor practice over sick leave.
12. The Charging Party complied with the parties' agreement and withdrew the grievance and ULP.
13. On or about July 2, 2014, the Respondent provided the Charging Party with a draft of the successor contract, which did not include the agreed upon Medical Certification language.

II. ISSUES AND CONTENTIONS

The issue is whether the Respondent violated Sections 10(a)(4) and (1) of the Act by repudiating the parties' agreement when it allegedly refused to include language on medical certification in the parties' successor contract.

The Union argues that the Respondent violated the Act by failing to incorporate medical certification language in the parties' collective bargaining agreement because the parties had a tentative agreement to include such language in their contract. In support of its assertion, the Union points to the parties' bargaining conduct, the Union's statements at the table, the language of the agreement, and the parties' subsequent conduct, including the Respondent's submission of the tentative agreement to the arbitrator and its settlement of a later grievance based on an alleged violation of that agreement. The Union denies that the tentative agreement simply settled a grievance and that the agreed-upon language merely modified the policy from which the grievance arose. The Union contends that the Respondent's interpretation of the agreement in that manner is nonsensical because that construction would preserve the Respondent's authority to later modify the policy at will, which would defeat the purpose of agreeing to specific language. The Union rejects the Respondent's contention that the Respondent's swift change of its policy following the parties' agreement indicates that the parties agreed to modify solely the policy. It notes that the Respondent partially performed on the parties' contract in other respects by implementing a number undisputed terms prior to ratification. Finally, the Union contends that the Respondent should be estopped from advancing its current interpretation of the agreement where it waited two years to present it.

The Respondent denies that it violated the Act by repudiating the parties' agreement. It contends that the parties reached no meeting of the minds to include the medical certification language in their contract and instead entered into a grievance settlement agreement wherein the Respondent simply agreed to modify a policy. The Respondent argues that the language of the agreement supports its claim that the parties agreed solely to policy language because the Union agreed to withdraw its pending litigation, which was based on the Respondent's change to policy. It claims that the parties could have had no meeting of the minds on the Union's stated terms because such an agreement would confer more than the Union could have achieved through litigation and would thereby provide the Respondent with no consideration. In the alternative, the Respondent asserts that the Union's claim of repudiation must fail because the

agreement is ambiguous on its face. It asserts that the Union cannot rely on statements and conduct to prove the agreement's terms where the parties reduced their agreement to writing, and it also rejects the Union's claim that the parties' conduct and statements demonstrate an agreement on the Union's terms.[1] Furthermore, the Respondent observes that it implemented the agreed-upon change to policy prior to completing negotiations on the contract and claims it would not have done so had the parties negotiated a tentative agreement on contract language. Finally, the Respondent denies that the Union's subsequent grievance on medical certification put the Respondent on notice of the Union's interpretation of the parties' agreement. In turn, the Respondent asserts that the Union should be estopped from advancing its current interpretation of the parties' agreement where it did not articulate it earlier.

III. FINDINGS OF FACT

The Respondent and the Union were parties to a collective bargaining agreement with a three year term (2009-2012) and an expiration date of December 31, 2011. The agreement states that the contract "shall remain in full force and effect after any expiration date while negotiations or Resolution on Impasse Procedure are continuing for a new Agreement or part thereof between the parties." The contract also grants the Respondent authority to promulgate or modify work rules and regulations, but provides that "the reasonableness of new or changed rules and regulations will be subject to the grievance procedure."

The Respondent maintains a sick leave policy. It sets forth the number of days of sick leave that trigger a requirement by employees to provide the Respondent with a doctor's note. From 1988 through 2011, the policy language related to that requirement stated solely the following: "if two (2) duty days for 52-hour personnel, or three (3) days for 40-hour personnel are missed, a doctor's release shall be required. Additionally, if an individual is on sick leave more than three (3) days during a sixty (60) calendar day period for 52-hour personnel, or three (3) days during a thirty (30) calendar day period for 40 hour personnel, he may be required to see a doctor and present the Department with a medical opinion and explanation of his recurring illness."

At all times material, the Respondent's policy has also provided that "sick leave shall be granted for absence from duty because of illness or off-duty injury…in the event that employee

[1] To that end, it asserts that the Union's witnesses are not credible.

is injured while in the employment of another, he or she shall not be eligible for sick leave benefits."

The parties' 2009 collective bargaining agreement contains language that mirrors some parts of the Respondent's sick leave policy. Specifically, Section 9.3(b) of the parties' agreement provides that "sick leave is defined as an off-duty illness or injury." Section 9.3(f) provides that "in the event an employee is injured while in the employment of another, he shall not be eligible for sick leave benefits." It is not unusual to have an overlap between the Respondent's rules and the contract language.

On or about August 2011, the parties began negotiations for a successor collective bargaining agreement. Union President Fire Lieutenant Brad Walker was the chief negotiator for the Union and Interim Director Patrick Hayes was the chief negotiator for the Respondent. Chief Fitz, Chief Coral, and Chief Knot also participated in some bargaining sessions.[2] Walker testified that all conversations during negotiations were "funneled" through him. Walker did not testify that the Union attorney Margaret Angelucci remained silent during negotiations. None of the Respondent's witnesses testified that Angelucci remained silent during negotiations. The parties discussed ground rules for bargaining but never reached an agreement to implement them.

On August 18, 2011, Fire Chief Derek Bergsten issued a memorandum that announced a modification to the Respondent's existing sick leave policy. The Respondent added a new section that required unit members to provide the Respondent with a doctor's note for a sick leave if the unit member had already taken two sick leaves within the calendar year. Specifically, it provided that, "[a]ll personnel who use sick leave [on] more than two (2) different occurrences within a calendar year shall be required to present the Department with a completed for RFD #517A [a physician certification] signed by their physician stating the individual may return to full firefighting duty. Any illness or injury that causes an individual to miss consecutive shifts within a given time period shall be considered as only one (1) use of sick leave." The memo further stated that the Respondent would not effectuate the new section until January 1, 2012.

On August 23, 2011, Union President Walker filed a grievance that challenged the reasonableness of the change to the Respondent's sick leave policy, as permitted under the parties' agreement. The Union challenged the new policy because it increased costs for unit

[2] The first names of these individuals do not appear in the record.

members, who would need to take additional time off work for a doctor's appointment and pay for doctor's visits to obtain a doctor's note.

Sometime after August 23, 2011, the Union and the Respondent met to discuss the proposed changes. The Union's representatives at the meeting included Walker, Union Vice President Frank DeCastris, and Union Secretary Christopher Scrol. The Respondent's representatives at the meeting included Fire Chief Derek Bergsten and one or two other members of management. Walker stated that the Respondent was required to negotiate the implementation of the new work rule related to sick time. At hearing, Hayes testified that the Respondent did not wish to bargain over the work rule because the parties had already negotiated a collective bargaining agreement by means of which the Chief would modify the Respondent's rules. The Respondent did not wish to add language to the contract that would restrict the Respondent's ability to modify its work rules.

Following the parties' discussions, Walker sent a letter to Chief Bergsten that stated in relevant part that "as we enter into negotiations[,] I feel that this would be the appropriate place to discuss any further changes or ideas concerning the sick leave policy." Walker testified that his correspondence was specifically related to discussing the Respondent's changes to the sick leave policy, as outlined in the Respondent's rules. However, he also stated that the parties' existing contract also included some aspects of the Respondent's sick leave policy.

On October 26, 2011, the parties met for negotiations. Present for the Union were Walker, DeCastris, Scrol, Jim Weerda, Dave Spataro, Jason Morese, Todd Monahan, and Tracey Renfro. The Respondent's Chief Negotiator Patrick Hayes tendered the Union a document entitled "City of Rockford 2012 Contract Proposals Presented to IAFF 413 October 26, 2011." The document contained 14 enumerated proposals. Some of the Respondent's proposals contained specific contract provisions that the Respondent wished to modify. These included Article 4.1 Company Strength, Article 4.2 Hours, Article 4.10 Paramedics, Article 5.2 Requirements to be a Candidate for Promotion, and Article 10.4 Furlough[3]. The remaining proposals advanced by the Respondent did not have article numbers. Some of those proposals without article numbers were labeled "new article," but others were not. The proposals labeled as "new article" included proposals on residency for new employees, residency for promotions to

[3] This proposal suggested that the parties add a new section within the existing article and it was labeled "new section."

captain or district chief, a single union at the 911 Center, and part-time telecommunicators. The unlabeled proposals included proposals on wages, insurance, selection of arbitrators, duration, and item number 10, entitled "Adopt the City's position on the Sick Leave procedure Change Grievance."

Item number 10 stated the following: "A recent grievance by the union disputes the authority of the Chief to require fire fighters claiming sick leave benefits from verifying an illness when the claimed sick leave day is immediately before or after a scheduled absence for vacation, holiday or Kelly day, or following a hire back. The City requests the grievance be withdrawn and [that] the union support the Chief's authority to interdict sick leave abuse." At hearing, Hayes described the Respondent's proposal as an offer to change the recently modified sick leave policy and to replace it with new language in exchange for the Union's withdrawal of the grievance. Walker by contrast characterized the Respondent's proposal as an offer of new contract language.

The Union rejected the Respondent's proposal and requested that the Respondent delay its implementation of the new sick leave policy. The Respondent declined to do so.

That same day, Chief Bergsten sent a letter to Walker to follow up on Walker's email of October 16, 2011.[4] He summarized the parties' interactions to date, related to the sick leave policy. He reiterated the parties' discussion at the October 26, 2011 meeting. To that end, he noted that the Union had offered options to alleviate the negative effects of the policy on employees' terms and conditions of employment which included a monetary reward, time off, or the elimination of health care premiums. Bergsten further stated that "during our discussions we expressed that we are unable to offer monetary rewards for what is expected of our personnel."

The Union and the Respondent met approximately six times between October 26, 2011 and January 2012 for negotiations. The Respondent did not raise the issue of the sick leave policy or contract language related to sick leave at any of those sessions.

On December 28, 2011, Walker sent a letter to Bergsten on behalf of the Union demanding to bargain over the Respondent's plans to unilaterally implement changes to the sick leave policy.[5] On that same date, Walker sent a separate letter to Bergsten stating that the Union believed that the Respondent should not change its sick leave policy, noting that change in policy

[4] This email is not part of the record.
[5] The letter also demanded to bargain another proposed change, which is not the subject of this case.

would change employees' working conditions, and requesting the Respondent's final position on the Union's related grievance.

On January 4, 2012, the Union demanded that the Respondent arbitrate its sick leave grievance. On January 6, 2012, Bergsten wrote a letter to Walker in which he agreed to advance the sick leave policy grievance to arbitration.

On January 12, 2012, the Union filed an unfair labor practice charge with the Board alleging that the Respondent violated Sections 10(a)(4) and (1) of the Act by unilaterally changing employees' terms and conditions of employment when it modified the sick leave policy.

On January 13, 2012, Chief Bergsten responded to the Union's demand to bargain over the Respondent's change to the sick leave policy. In relevant part, the Respondent stated that it believed it had no obligation to bargain over its proposed change to the sick leave policy on the grounds that it was exercising its contractual right during the term of the parties' existing collective bargaining agreement. Specifically, he noted that "the City is seeking to change a Fire Department rule that is not specifically contained in the contract. Section 13.1 of the contract, however, specifies the procedures that are applicable if the City wants to change any Fire Department rule. It is the City's position that it has complied with those procedures and, as a result, it has the right to implement the proposed change." However, Bergsten also stated that "the City recognizes that the Union would have the right to propose modifications to the current contract and the City will honor whatever bargaining obligations it may have in this regard." He stated that "the City would concede that sick leave is a mandatory subject of bargaining."

Hayes testified that the Respondent encouraged the Union to present contract language during bargaining to address the medical certification work rule. Respondent's counsel asked Hayes at hearing "did you ever implore the Union to develop draft contract language on the subject?" Hayes responded, "I did and—." Counsel interrupted, and restated the question to emphasize that the term contract meant collective bargaining agreement: "I'm sorry, Collective Bargaining Agreement language on this subject." Hayes then modified his response to the question, stating, "no, because we were not interested, again, in restricting the ability to modify the behavior to the collective bargaining process as far as it related to the contract." I credit the first answer offered by Hayes because the initial question was unambiguous and required no clarification.

On January 18, 2012, Union attorney Margaret Angelucci wrote a letter to Chief Bergsten to formally give the Respondent notice of its intent to arbitrate the sick leave grievance.

On January 19, 2012, the Respondent implemented its changes to the sick leave policy.

On April 18, 2012, the Board's Executive Director deferred the Union's unfair labor practice charge to arbitration.

On May 10, 2012, the parties met for negotiations on their successor contract at the fire department headquarters. At the meeting, the Union tendered the Respondent a document entitled, "IAFF LOCAL 413 PACKAGE PROPOSAL 5.10.12." The proposal did not include the header "2012 to 2014 Contract." In relevant part, the proposal provided that "the Union would agree to withdraw the grievance and unfair labor practice charge regarding unilateral changes to the sick leave policy and the City would withdraw its Proposal No. 10 if the following language could be agreed upon."

The language stated that the Respondent could audit and monitor employees suspected of sick leave abuse, and it set criteria that would trigger such suspicion of abuse. The Respondent could suspect employees of sick leave abuse if they had more than six (6) sick leave occurrences in a 12 month period. The proposal defined an occurrence of sick leave as "a single event of calling in sick" regardless of the period time over which the sickness occurred. In addition, the proposal required the Respondent to pay for the time and expense of the doctor's examination mandated by the Respondent upon suspicion of sick leave abuse. Finally, the Union proposed to modify Section 9.5 of the parties' contract, which addressed sick leave pay upon severance. Walker testified that each time he handed the Respondent the Union's proposals on Medical Certification language, he thereby indicated that the Union intended that the parties would place the proposed language into the contract.[6]

The Respondent verbally rejected the Union's May 10, 2012 proposal.

On June 8, 2012, the parties met again for contract negotiations. Walker could not remember all members of the Respondent's negotiating team who appeared at this session. The Union tendered the Respondent a document entitled, "IAFF Local 413 Proposal To the City of Rockford 2012-2014 Contract June 8, 2012."

[6] Specifically, Walker testified that "each time I gave [Respondent's chief negotiator Hayes] a proposal, it was me saying this is going in the contract. We were there for contract negotiations." Tr. P. 67.

The proposal contained the same introductory language as the prior proposal, which stated that the Union would agree to withdraw its pending grievance and unfair labor practice charge "if the following language could be agreed upon." It likewise proposed the same modification to Section 9.5 of the contract, which addressed sick leave pay upon severance. Similarly, it maintained the requirement that the Respondent pay for the costs of verifying an employee's illness when the Respondent suspected sick leave abuse.

However, it contained the following new language, which imposed greater restrictions on unit members than the prior proposal: "If two (2) consecutive duty days for 51 hour personnel, or three (3) days for 40 hour personnel are missed, a doctor's release shall be required. Additionally, if an individual is on sick leave more than three (3) days during a one hundred twenty (120) calendar day period for a 51 hour personnel, or three (3) days during a thirty (30) calendar day period for 40 hour personnel, he may be required to see a doctor and present the Department with a medical opinion and explanation of his recurring illness. Additionally, if an individual has more than five (5) occurrences during a calendar year, he may be required to see a doctor and present the Department with a medical opinion and explanation of his recurring illness."

In one respect, this proposal was more restrictive on unit members than the Respondent's sick leave policy because it granted the Respondent a longer window period to assess employees' sick leave use.[7] In another respect, this proposal was less restrictive on unit members because it allowed unit members to incur five instances of sick leave in a calendar before triggering the doctor's note requirement, whereas the Respondent's policy required a doctor's note after two occurrences.

Walker explained the language of the proposal to the Respondent. The Respondent verbally rejected the Union's June 8, 2012 proposal.

On July 11, 2012, the parties met with a mediator. At the meeting, the Union tendered a third proposal to the Respondent through the mediator, entitled "IAFF Local 413 Proposal To the City of Rockford 2012-2014 Contract July 11, 2012." The entire proposal is set forth below:

[7] Under the Respondent's existing sick leave policy, the Respondent could require a doctor's note if an employee had used three sick days within a sixty (60) day, for 51-hour personnel. Under the Union's proposal, the Respondent' could require a doctor's note after the same number of sick days (three), but this time within a one hundred and twenty (120) day period, for 51-hour personnel.

The Union would agree to withdraw the grievance and unfair labor practice charge regarding unilateral changes to the sick leave policy and the City would withdraw its Proposal No. 10 if the following language could be agreed upon:

MEDICAL CERTIFICATION
It is agreed that the City has the right to audit and monitor, and, if an employee is suspected of abuse, to take corrective action, including such actions as discussing the matter with the employee, requiring that the employee seek medical consultation, or instituting sick leave verification calls for employees suspected of abuse.

If two (2) consecutive duty days for 51 hour personnel, or three (3) days for 40 hour personnel are missed, a doctor's release shall be required. Additionally, if an individual is on sick leave more than three (3) days during a one hundred twenty (120) calendar day period for a 51 hour personnel or three (3) days during a thirty (30) calendar day period for 40 hour personnel, he may be required to see a doctor and present the Department with a medical opinion and explanation of his recurring illness. Additionally, if an individual has more than four (4) occurrences during a calendar year, he may be required to see a doctor and present the Department with a medical opinion and explanation of his recurring illness.

With regard to an employee suspected of sick leave abuse, should the Fire Chief, or designee, order an employee to obtain an examination to determine that employee'sillness and/or fitness for duty, the medical expense, including that employee's time, shall be borne by the City.

The City would agree to Union proposal #26 as modified:

The City shall not assign non-413 personnel to facilities being used by 413 personnel. However, this provision shall not apply in emergency situations where MABAS personnel are deployed or in other temporary emergency situations. This provision does not apply to City of Rockford employees.

In sum, the Union's new proposal on medical certification reduced to four (4) the total number of sick occurrences within a calendar year that would trigger the requirement to provide a doctor's note. It also newly included a proposal that the Respondent agree not to assign certain non-union personnel to facilities used by union personnel, with certain limited exceptions.

During mediation, the Union believed that the mediator did not accurately explain its proposal to the Respondent. Accordingly, the parties jointly dismissed the mediator. The parties continued their negotiations in a small group meeting that included Union Attorney Margaret Angelucci, Bergsten, Walker, and Hayes.

The witnesses offer differing accounts of the statements made at the small group meeting. I credit testimony from witnesses who stated that no Union agent made any express statements that the Medical Certification language would appear in the contract. Chief Bergsten denied that the parties discussed the creation of new contract language during their negotiations over the Medical Certification language. Respondent's chief negotiator Hayes similarly denied that the Union expressly stated that it intended that the parties include the medical certification language in the parties' collective bargaining agreement. Angelucci likewise testified that she did not make an "overt" statement that the proposed language would appear in the contract because "nobody on [her] team was questioning" that it would appear in the contract. Although Walker offered testimony that suggests the Union did make more express statements that the Medical Certification language would appear in the contract, I do not credit this testimony for two reasons. First, Walker offered this testimony in response to leading questions.[8] Second, Walker's remaining testimony suggests that it was his conduct, rather that his statements that indicated the Union's desire to include the medical certification language in the contract. He explained that "each time I gave [Respondent's chief negotiator Hayes] a proposal, it was me saying this is going in the contract. We were there for contract negotiations." Tr. P. 67.

However, I also credit Angelucci's testimony that she told the Respondent that the Union was proposing more restrictive language on its members and a longer "look back window" to "get it locked down" so that the Union would not need to address the matter again at a later date. Hayes did not unequivocally deny that Angelucci explained the Union's rationale for negotiating the language. When Respondent's counsel questioned Hayes more specifically about Angelucci's statements on rebuttal Hayes simply stated that "I don't believe she explained it." Notably, Walker's testimony concerning his role in negotiations does not undermine this credibility determination. Walker testified that he was the chief spokesman for the Union and

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Q: And was there a discussion that it was more restrictive, you were willing to have language that was more restrictive on your members in order to secure this contract language?
A: Yes.
Tr. P. 64.
…
Q: And the statements that were made regarding having this included in the contract were made with all members of the City's bargaining team present?
A: Yes.
Tr. P. 67.

that all conversations "funnel[ed]" through him. However, Walker never claimed that Union attorney Angelucci remained silent during negotiations. Moreover, Hayes himself did not deny that Angelucci spoke at the table and instead offered testimony to rebut her assertion that she made a particular statement.[9]

The parties agree that Bergsten asked for a minor modification in the proposal's language, to change the "may" in the second paragraph to "shall." They similarly agree that the Union accepted the change and that the representatives for both parties signed the proposal to demonstrate their agreement.

Following the parties' execution of their agreement, Bergsten told Walker that he would implement the changes to the policy in the next day or two. The Respondent never informed the Union that it would place the medical certification language solely in the Respondent's policy or that the negotiated language would be subject to change by the chief.

On July 13, 2012, the Respondent changed the Medical Certification policy to comport with the language agreed to by the parties two days earlier. Bergsten sent a memorandum outlining that change that stated the following in relevant part. "Changes have been … agreed to by both the Union and Administration…[t]herefore Article VI [of the Respondent's rules and policies] with these new additional/changes, is hereby being posted for the requisite seven (7) days to fulfill the requirements of the Collective Bargaining Agreement, Article 13.1-Work Rules, and will become effective immediately following the seven-day posting period."

The parties were unable to resolve all open issues under negotiation and submitted their dispute to interest arbitrator Elliot H. Goldstein. On September 30, 2013, the interest arbitrator issued his award. The award included pre-hearing stipulations. One of the stipulations provides that, "all tentative agreements reached during negotiations, except those entered into in mediation, are submitted as Joint Exhibit 4 and shall be incorporated by reference into this Award."

The Respondent and the Union submitted their July 11, 2012 agreement addressing Medical Certification to the interest arbitrator, along with all the other tentative agreements they reached, and the arbitrator attached them to his award. The attached tentative agreements included agreements reached on November 22, 2011, June 8, 2012, August 10, 2012, April 17, 2012. All of the tentative agreements attached to the award included the header "2012 Contract"

[9] It would be unusual indeed if the Union's own attorney made no statements during bargaining.

or "2012-2014 Contract." Some of the tentative agreements included express language that the parties agreed to include in the contract. Other tentative agreements were agreements to withdraw proffered proposals, without reference to the exact language they contained. For example, one of the tentative agreements stated that "The parties agree to the following package proposal: The Union agrees to withdraw proposal 19, Preceptor Pay. The City withdraws proposal 6 Residency Captains." Similarly, the parties' tentative agreement on contract duration provides that "the Union accepted the City's Proposal #14 Duration and the Union withdrew Proposal #27 Duration." One tentative agreement included a package proposal under which the Union agreed to the Respondent's proposal 11 on selection of Arbitrators and the Respondent withdrew proposal 8 Part Time Telecommunicators. The package proposal further provided that "the City may continue the effort to establish part time Telecommunicators for the AFSCME positions."

At hearing, Hayes explained the tentative agreement related to the AFSCME Telecommunicators. He noted that the Respondent operates a 911 call center that includes workers who are represented by AFSCME and workers represented by the Union. The Respondent wished to negotiate advance permission from the Union to use part-time AFSCME workers without risking a grievance by the Union over a reduction in work opportunities or a change in working conditions. This language regarding AFSCME Telecommunicators does not appear in the final contract that the parties drafted. Angelucci testified that the Union could not include such language in its contract because the Union does not represent AFSCME members.

The parties agree that the contract reflects the parties' tentative agreements of April 17, 2012, August 10, 2012, and November 2011. The parties likewise agree that the contract includes language included in the second part of the tentative agreement entered into on July 11, 2012, under which the Respondent agreed to the Union's proposal #26 as modified in that document. The Union's modified proposal #26 did not include a contract section to indicate where in the contract it would appear because it proposed new language. If language is new, parties do not necessary know where it should appear in the contract and they may not designate a contract section for that language in negotiations. The parties later designated Union proposal #26 as Section 13.14 of the parties' agreement.

In January or February 2013, Scrol replaced Walker as Union President.

On March 3, 2014, Scrol filed a class action grievance alleging a violation of the parties' successor agreement, settled through interest arbitration. The successor agreement provides that a grievance is "any dispute or complaint concerning the interpretation of, application of, or compliance with the terms of this Agreement." The grievance alleged that the Respondent was not adhering to medical certification language to which the parties had agreed on July 1, 2012. The grievance stated the following in relevant part:

> Article VI of the Rockford Fire Department's Rules and Regulations and language found in the Collective Bargaining Agreement (e.g. the tentative agreement signed on July 11, 2012) cover the use of sick leave. They stipulate when an employee shall be required to obtain a medical examination in order to determine the nature of their illness and/or their fitness for duty. Article VI of the Rules and Regulations and the CBA also specify who shall bear the cost of the medical expenses and when an employee shall be compensated for their time.
>
> It has come to our attention that bargaining unit members are being required to obtain medical examinations outside of the parameters set forth in the Department's Rules and Regulations as well as the CBA. Furthermore, our members have incurred the cost of those medical expenses without reimbursement and have not been compensated for their time. These actions clearly violate the current Collective Bargaining Agreement, and other related policies and past practices.

Scrol met with Chief Bergsten, Operations Chief Coral, and Administrative Chief Castronovo twice to discuss this grievance. None of the Chiefs asserted that the grievance was not procedurally arbitrable because the medical certification language was not part of the contract. The parties ultimately settled the grievance.

On June 30, 2014, Scrol sent Hayes a draft contract that the Union believed reflected the terms of the interest arbitrator's award. The Union's draft contract included the Medical Certification language agreed upon by the parties on July 11, 2012. Hayes testified that before he received this email he was unaware that the Union wished to include the Medical Certification in the contract.

On July 2, 2014, Hayes responded to Scrol's email denying that the Respondent had agreed to include the medical certification language in the parties' contract. Scrol replied that "the sick leave policy was resolved through contract negotiations and signed as a TA." He further stated that "this position is supported by the fact that as a quid pro quo the City accepted the Union's proposal limiting personnel who are assigned to facilities used by 413 members." The Union's email did not assert that the parties had expressly agreed to include the medical certification language in the contract.

The Union's witnesses testified that the Union would have never signed the tentative agreement on medical certification if they had believed that the agreement secured only a change in the language of the rules and regulations rather than the addition of language in the contract. They testified that there would have been little benefit to negotiating language that the Respondent reserved the right to change at a later date.

Similarly, the Respondent's witnesses testified that the Respondent would never have signed the tentative agreement on medical certification if its agents had believed that the agreement inserted the language into the contract. Bergsten and Hayes explained that the insertion of medical certification language in the contract would restrain the Respondent in the exercise of its management rights because the Respondent would need to bargain over any change to that language. By contrast, Bergsten and Hayes believed that if the parties bargained over the language of the rules and regulations, the Respondent could modify that language as long it gave the Union the contractually required seven days' notice.

Hayes further stated that the Respondent would have agreed to limit its management rights to make changes to medical certification language only if the Union had offered "massive…quid pro quo." Hayes admitted that the Respondent found value in settling unfair labor practice charges and grievances.[10] He further admitted that the Respondent found value in bringing fewer matters before the interest arbitrator. However, he noted that the Union's success on the grievance and the charge would have merely reinstated the prior rule in effect and would not have restricted the Respondent's management right to make future changes in accordance with the contract. Hayes noted that the tentative agreement also contained a work preservation clause that was a concession to the Union.

Angelucci testified that the Union's proposed language was more restrictive on unit employees than the Respondent's newly modified policy, which was the subject of the unfair labor practice charge and the grievance. She further noted that in the July 11, 2012 meeting at which the parties agreed on Medical Certification language, the Union also agreed to withdraw its proposal that officers and drivers would bid for assignment by seniority.

The Respondent implemented the agreed-upon wage increases for 2012, 2013, and 2014, following issuance of the arbitration award, even though the parties have not yet signed the agreement. The Respondent also implemented the sick leave severance, insurance changes,

[10] Bergsten also offered testimony to this effect.

changes to the promotional process, changes to tuition reimbursement, and changes to the selection of arbitrators, and changes to flex time, but it is unclear from the record whether the Respondent implemented these changes before or after the arbitrator issued his award.

IV. DISCUSSION AND ANALYSIS

The Respondent's refusal to include the parties' negotiated medical certification language into the parties' agreement constitutes a repudiation of the collective bargaining process.

Section 10(a)(4) of the Act provides, in part, that it is an unfair labor practice for a public employer to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit. 5 ILCS 315/10(a)(4). When an employer's conduct demonstrates a disregard for the collective bargaining process, evidences an outright refusal to abide by a contractual term, or prevents the grievance process from working, that conduct constitutes repudiation and violates Section 10(a)(4) and (1) of the Act. City of Loves Park v. Illinois Labor Relations Board State Panel, 343 Ill. App. 3d 389, 395 (2nd Dist. 2003); City of Collinsville, 16 PERI ¶ 2026 (ISLRB 2000), aff'd, City of Collinsville v. Illinois State Labor Relations Board, 329 Ill. App. 3d 409 (5th Dist. 2002).

As a threshold matter, to prove that a party violated the Act by repudiating an agreement the charging party must first demonstrate that the parties had an agreement. An agreement requires offer, acceptance, and a meeting of the minds. Tri-State Fire Protection Dist., 31 PERI ¶ 78 (IL LRB-SP 2014); Chicago Transit Auth., 29 PERI ¶ 156 (IL LRB-LP 2013); Recorder of Deeds, 28 PERI ¶ 14 (IL LRB-LP 2011). To have a meeting of the minds, parties must truly assent to the same things in the same sense on all of the agreement's essential terms and conditions. Tri-State Fire Protection Dist., 31 PERI ¶ 78; Chicago Transit Auth., 29 PERI ¶ 156; Recorder of Deeds, 28 PERI ¶ 14. Whether the parties had a meeting of the minds is determined by their objective conduct rather than their subjective beliefs. Paxton-Buckley-Loda Educ. Ass'n v. Ill. Educ. Labor Rel. Bd., 304 Ill. App. 3d 343 (4th Dist. 1999); Tri-State Fire Protection Dist., 31 PERI ¶ 78; Ill. Fraternal Order of Police Labor Council, 19 PERI ¶ 39 (IL LRB-SP 2003); City of Chicago (Police Dep't), 14 PERI ¶ 3010 (IL LLRB 1998).

Once the charging party demonstrates that the parties reached agreement, the Board will find a repudiation of that agreement if the Respondent made a (1) substantial breach of the

agreement (2) without rational justification or reasonable interpretation such that it demonstrates bad faith. Chicago Transit Auth., 32 PERI ¶ 161 (IL LRB-LP 2016); Cnty. of Boone and Boone Cnty. Sheriff, 31 PERI ¶ 120 (IL LRB-SP 2015); City of Chicago, 30 PERI ¶ 194 (IL LRB-LP 2014).

1. The Parties Agreed to include Medical Certification Language in their Contract

The parties' objective conduct demonstrates that the parties reached a meeting of the minds to include the medical certification language in their contract. The Respondent's statements regarding its rights and obligations under the 2009-2012 contract, its offer to bargain sick leave in the successor agreement, its solicitation of contract proposals from the Union on medical certification, and the Union's statements on the day of agreement support that finding. The Respondent's conduct before the interest arbitrator confirms the parties' meeting of the minds.

The Respondent's description of it rights and obligations under the 2009-2012 contract, in a January 13, 2012 letter to the Union, illustrates its understanding that the Union could secure a binding change to medical certification language only by its inclusion in the successor contract. In that letter, the Respondent refused the Union's demand to bargain over the Respondent's 2011 change to medical certification rules on the grounds that it had the right under the contract in effect at the time to "change a Fire Department rule that is not specifically contained in the contract." Since medical certification rules did not appear in the parties 2009-2012 contract, the Respondent reasoned that contract imposed only procedural limitations on its implementation of new rules. The Respondent concluded that it "ha[d] the right to implement the…change" because it had "complied with those procedures." Chicago Transit Auth., 15 PERI ¶ 3018 (IL LLRB 1999) (considering respondent's interpretation of its contracts in determining issue of good faith in case alleging repudiation).

The Respondent then stated a willingness to bargain over a change to sick leave rules as part of negotiations for a successor agreement and solicited contract language from the Union during bargaining. Specifically, the Respondent conceded that "sick leave is a mandatory subject of bargaining" and pledged that it "[would] honor whatever bargaining obligation it [had] in this regard." To that end, the Respondent asserted that "the Union would have the right to propose modifications to the current contract" to cover sick leave. The Respondent's chief

negotiator Hayes admitted at hearing that the Respondent requested proposals on contract language from the Union regarding sick leave and medical certification during negotiations for a successor agreement.

Next, the Union's statements on the date of the parties' agreement on medical certification (July 11, 2012) indicate that the Union offered its proposal as language that would be included in the contract. Attorney Angelucci informed the Respondent that it proposed the medical certification language to "lock it down." She thereby expressed the Union's intent to forestall future discretionary changes and to eliminate the contractual justification that supported the Respondent's most recent August 2011 change to medical certification rules.

The Respondent then demonstrated its agreement to include the specified language in the contract by signing the Union's proposal as a tentative agreement, without disputing the Union's understanding of its terms. Although the Respondent informed the Union that it would soon incorporate the negotiated language into its policies, it made that statement only after both parties had signed the tentative agreement. Moreover, it never expressed its belief that its modification of the policy would discharge its obligations under the tentative agreement, nor did it otherwise disclaim a duty to also incorporate the negotiated language into the parties' contract. Thus, the Respondent left the Union with an undisturbed understanding that the parties had agreed to incorporate the medical certification language in their collective bargaining agreement, and it confirmed that understanding by submitting the tentative agreement to the arbitrator. Bud's Cooling Corporation and Bud Antle, Inc., 138 NLRB 596, 601 (1962)(respondent's failure to articulate its own understanding of the agreement when it knew the Union's position undermined its claim of ambiguity).

Finally, the Respondent's stipulation before the arbitrator, to incorporate all tentative agreements into the award, and its conduct in conformity with that stipulation further demonstrate the Respondent's understanding that the medical certification language belonged in the contract. The evidence shows that the Respondent understood that the stipulation required the parties' to include, in their contract, all express language addressing unit members' terms and conditions of employment to which the parties had agreed during bargaining. In fact, the Respondent included all other express language from the tentative agreements into the parties' draft contract, including other parts of the July 11, 2012 tentative agreement. In light of the parties' conduct discussed above, the Respondent offers insufficient grounds on which to

distinguish the omitted medical certification language from the other tentative agreement language it included by stipulation.

Notably, the parties' failure to incorporate every tentative agreement into the contract verbatim is no defense to this omission. None of the other language omitted by the Respondent can reasonably be viewed as express language covering employees' conditions of employment. No such express language appears in the tentative agreements wherein the parties agreed to withdraw some proposals in exchange for the acceptance of others. Similarly, the parties' agreement related to AFSCME positions does not contain express language impacting unit members' terms and conditions of employment.[11] Thus, the Respondent's demonstrated understanding of the parties' stipulation before the interest arbitrator supports the Union's position that the parties agreed to include medical certification language in their contract and not simply in the Respondent's polices.

None of the Respondent's arguments erode the finding that the parties agreed to include the medical certification language in the contract. First, the Respondent is incorrect in its assertion that the Board cannot consider the parties' conduct in the meeting of the minds analysis where the parties have memorialized their agreement in a written document. The Board is not strictly bound by technical rules of contract law in ascertaining whether parties have reached a meeting of the minds, and the Board has considered parties' bargaining conduct in making that determination even where the parties have a complete written agreement.[12] City of Collinsville, 329 Ill. App. 3d at 417 ("technical rules of contract law are not strictly binding" on the Board); City of Clinton (Dr. John Warner Hospital), 29 PERI ¶ 167 (IL LRB-SP 2013)(considering parties' actions in determining whether parties had reached meeting of the minds on written settlement agreement); Chicago Transit Auth., 15 PERI ¶ 3018 (considering respondent's bargaining conduct and interpretation of prior agreements even where parties had a complete and executed written agreement).

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[11] That tentative agreement states that, "the City may continue the effort to establish part time Telecommunicators for the AFSCME positions." The Respondent did not include that language in the contract it formulated, and the Union never objected to this omission.

[12] The Respondent's reliance on the parol evidence rule to exclude consideration of this same conduct is likewise inapposite. The parol evidence rule "generally precludes evidence of understandings, not reflected in a writing, reached before or at the time of its execution which would vary or modify its terms." J. & B. Steel Contractors, Inc. v. C. Iber & Sons. Inc.,162 Ill.2d 265, 269 (1994). Though the Board has applied this rule, the evidence in this case is not offered to vary any express terms of the parties' agreement. PACE, Northwest Division, 12 PERI ¶ 2010.

Next, the parties' expressions prior to January 13, 2012, fail to indicate that the Union sought to include the bargained-for language only in the Respondent's rules, where the parties' subsequent conduct indicates the opposite. Accordingly, neither the Union's 2011 claims that it wished to bargain over the Respondent's "sick leave policy" nor the Respondent's earlier claims that it would not relinquish its right to unilaterally modify its rules, undermine a finding that the parties reached a meeting of the minds on contract language. Cnty. of Cook and Sheriff of Cook Cnty., 26 PERI 13 (IL LRB-LP 2010)(respondent's earlier rejection of charging party's proposal did not undercut finding of meeting of the minds where respondent's later conduct demonstrated agreement).

Contrary to the Respondent's contention, the consideration offered by the Union in exchange for agreement on the medical certification language fails to undermine a finding that the parties reached a meeting of the minds to include that language in their contract. As a preliminary matter, courts do not ordinarily examine the adequacy of consideration, unless it is so "grossly inadequate as to shock the conscience," and the Respondent offers no support for its contention that the Board has taken a different approach in the collective bargaining context. Hurd v. Wildman, Harrold, Allen & Dixon, 303 Ill. App. 3d 84, 92 (1st Dist. 1999). Moreover, when courts consider the adequacy of consideration, they do so to judge an agreement's enforceability, not its existence, at issue here. Compare Martin v. State Farm Automobile Insurance, 348 Ill. App. 3d 846, 855 (1st Dist. 2004) (no agreement exists where there is no meeting of the minds); Hurd v. Wildman, Harrold, Allen & Dixon, 303 Ill. App. 3d at 92 (agreement is not enforceable absent consideration).

Nevertheless, applying the court's analysis of consideration to the meeting of the minds question, it is clear that the Respondent did receive substantive consideration for its agreement to contract language, and that further scrutiny of the consideration is therefore unwarranted. The Union agreed to withdraw its grievance and unfair labor practice charge in exchange for medical certification contract language, which was in some respects more restrictive on union members than the Respondent's existing policy,[13] and a work preservation clause. The Respondent

[13] The agreement was more restrictive on members in that it extended the "look back" period, the time period reviewed by the Respondent to assess alleged sick leave abuse. It was less restrictive in that it allowed a greater number of sick leave absences per year before the Respondent required a doctor's note. The Respondent claims that there is no evidence that it desired a more restrictive work rule or that the

thereby not only avoided the risks of litigation and the burden of submitting a competing proposal on medical certification language to the arbitrator, it also reached an agreement on a permissive subject of bargaining—the withdrawal of pending litigation—which it could not have forced through the interest arbitration process. Bd. of Trustees, Southern Ill. Univ. at Edwardsville, 19 PERI ¶ 83 (IL ELRB 2003) (a proposal to settle an unfair labor practice case is a permissive subject of bargaining); City of Wheaton, 31 PERI ¶ 131 (IL LRB-SP 2015)(parties can submit permissive subjects to an arbitrator, but union can strike them from arbitrator's consideration) aff'd by Wheaton Firefighters Union, Local 3706 v. Illinois Labor Relations Board, State Panel, 2016 WL 3634755 (2nd Dist. 2016). Most importantly, the Respondent's agents admit that the Respondent found value in this consideration.

Notably, the Respondent's assertion, that the Union provided inadequate consideration, is based on a misunderstanding of the remedy that the Board would have ordered upon finding an unlawful unilateral change. The Respondent claims that it would never have agreed to contract language in exchange for the Union's withdrawal of its pending litigation because the Union's successful litigation would have achieved only a restoration of the policy language that existed before the change. The Board certainly would have ordered a restoration of the status quo policy language, but it would have likely also ordered a make-whole remedy and an order to bargain over future, similar changes to the Respondent's medical certification rules. See City of Chicago, 31 PERI ¶ 3 (IL LRB-LP 2014); City of Aurora, 24 PERI ¶ 25 (IL LRB-SP 2008); City of Crest Hill, 4 PERI ¶ 2030 (IL SLRB 1988). A make-whole remedy would have included payment to employees for the medical expenses incurred from the change, with interest, and an order to rescind discipline imposed as a result of the unilaterally-imposed policy. A bargaining order, in turn, would have undermined any claim by the Respondent, advanced under its current interpretation of the parties' tentative agreement, that it had the discretion to make unilateral changes to medical certification rules in the future. Thus, it is no stretch to imagine that the Respondent agreed to contract language to avoid these risks of litigation and that it even added a concession on work preservation to secure the Union's agreement. City of Chicago, 31 PERI ¶ 3 (requiring respondent to rescind discipline imposed based on unilateral change and to make employees whole for losses incurred as a result of the change at 7% per annum); City of Aurora,

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more stringent rule was a bargained-for benefit; however, the Respondent's earlier rejection of a less restrictive work rule belies this claim.

24 PERI ¶ 25 (articulating make-whole remedy); City of Crest Hill, 4 PERI ¶ 2030 (ordering the respondent to bargain over future changes upon request by the union).

Similarly, the Respondent is incorrect in its claim that the Union's stated withdrawal of litigation related to the Respondent's medical certification policy expresses an unmistakable intent to modify solely the policy. Although the Respondent's modification of its policy served as the impetus for both the grievance and the charge, the Respondent's own understanding of its rights and obligations shows that an agreement to modify the policy alone would not remedy both of the alleged harms. An agreement on policy language would remedy the Union's claim that the policy was unreasonable, as alleged in the grievance. However, an agreement on policy language would not completely remedy the Union's claim of unilateral change, alleged in the charge, where the Respondent stated that it could unilaterally change that policy at any time unless the parties incorporated it into their contract. Thus, the quid pro quo described by the Respondent in fact supports a finding that the parties had a meeting of the minds to include medical certification language in their collective bargaining agreement.

In light of the parties' meeting of the minds and in the absence of a contractual defense to liability, there is no basis on which to second-guess the parties' collectively bargained-for agreement. Indeed, the National Labor Relations Board has advanced the same approach. Triple A Fire Protection, Inc., 357 NLRB 693, 694 (2011)(NLRB did not second guess parties' collectively-bargained remedy for breach of contract, in the absence of a recognized defense to contractual liability, where the parties had a meeting of the minds).

Thus, when the Respondent signed the Union's July 11, 2012 proposal, it agreed to include the Union's proposed medical certification language in the parties' contract.

2. The Respondent's Breach of that Agreement was Substantial and Made in Bad Faith

The Respondent substantially breached the parties' agreement by refusing to include medical certification language in the parties' contract and it offers no reasonable interpretation of the parties' agreement to support its conduct.

First, The Respondent's breach is substantial because its refusal to include medical certification language in the contract allows the Respondent to make discretionary changes to

medical certification rules during the term of the parties' agreement.[14] These rules have a significant impact on employees' terms and conditions of employment because they bear on employee discipline and employees' financial obligations. Employees who incur more than the specified number of sick leave absences with the period set forth in the rules face scrutiny for alleged sick leave abuse and must produce a doctor's note, at the Respondent's direction. If the Respondent had discretion to modify these rules—as their omission from the contract would allow—the Respondent could shift the costs of medical expenses back to the employees and could increase the potential for discipline by making its rules more stringent. Accordingly, the Respondent's refusal to include the medical certification language in the contract is a substantial breach of the parties' agreement. Chicago Transit Auth., 15 PERI ¶ 3018 (breach that impacted overtime and shift schedules was substantial); City of Kewanee, 23 PERI ¶ 110 (IL LRB-SP 2007)(unilateral changes to bargained insurance coverage and layoff procedures constituted substantial breach).

Second, the Respondent has offered no good faith interpretation of the parties' agreement to justify its refusal to include the agreed-upon language in the parties' contract. The Respondent claims that the contract is ambiguous because it fails to specify that the agreed-to language is contract language rather than language that would appear solely in the Respondent's rules. However, the mere offer by the Respondent of an alternate interpretation of the parties' agreement does not preclude a finding of repudiation because the question of a contract's ambiguity is inextricably linked to the analysis of the Respondent's good faith. Chicago Transit Auth., 15 PERI ¶ 3018. In assessing that interpretation, the Board considers the parties' intent at the time the agreement was written, and "'it is this meaning that governs, not what can be possibly read into the language.'" Chicago Transit Auth., 15 PERI ¶ 3018 n. 13 (Board affirmed ALJ who cited Elkouri and Elkouri, How Arbitration Works, Fourth Edition, at page 348). To that end, the Board looks to the circumstances surrounding the parties' negotiations to determine whether the Respondent's proffered interpretation of the contract is bona fide or whether it is instead without rational justification or reasonable interpretation, such that bad faith may be

[14] The parties agree that the inclusion of medical certification language within the contract would preclude the Respondent from unilaterally changing medical certification rules during the term of the contract. They similarly agree that including the language solely in the Respondent's policies would preserve the Respondent's authority to make discretionary changes subject only to the procedural limitations of granting the Union timely notice of the change.

inferred. Chicago Transit Auth., 15 PERI ¶ 3018 (looking to other proposals offered during negotiation, the parties' past practices, and the parties' bargaining history); City of Kewanee, 23 PERI ¶ 110 (IL LRB-SP 2007).

For example, in Chicago Transit Authority, the Board considered the Respondent's bargaining proposals and the parties' bargaining history to determine that the contract language in dispute was unambiguous and that the Respondent's breaches constituted repudiation. Chicago Transit Auth., 15 PERI ¶ 3018. The Board reasoned that the contract language clearly barred the Respondent from changing turnstile collectors' shift schedules and eliminating overtime where the Respondent had unsuccessfully sought to negotiate language that would allow that very action. Id. The Board further held that the provisions unambiguously covered turnstile collectors, who were general office employees, even though the provisions at issue appeared in an article that addressed "Bus System" workers. Id. In so holding, the Board rejected the Respondent's interpretation to the contrary as disingenuous. Id. The Board observed that the parties had negotiated to include the same language in a number of prior contracts, without expressly mentioning general office employees, and it further observed that the parties treated those employees as covered by the provisions. Id. The Board concluded that it would be illogical to assume that the parties had repeatedly ignored an entire group in negotiating important terms. Id.

Likewise, in The Permanente Medical Group, Inc., an ALJ of the National Labor Relations Board considered parties' statements during negotiations and the parties' course of conduct to determine that their written agreement on wages was unambiguous. The Permanente Medical Group, Inc., 2016 WL 1743223 (N.L.R.B. Div. of Judges). The ALJ held that the parties' agreement clearly required the Respondent to pay retroactive wage increases covering the years 2014 and 2013, even though the language only expressly referenced retroactive wages for 2012. Id. In so holding, the ALJ found the Respondents claim of ambiguity was "disingenuous" where the Respondent's correspondence to the Union indicated its understanding that the agreement included retroactivity for all past years of the contract. Id. The ALJ also observed that the sole reason that the agreement expressly referenced retroactivity for 2012, but omitted such reference for the later years, was because only the year 2012 had passed at the time the parties first exchanged the proposals on which they based their agreement. Id. The ALJ

concluded that the Respondent repudiated that unambiguous wage agreement by failing to provide employees retroactive increases for all past years of the contract. Id.

Similarly, in this case, the parties' representations during bargaining demonstrate that the agreement is clear even though it does not expressly state that the medical certification language will appear in the parties' contract. The Respondent explained to the Union that it could secure a binding change to medical certification language only by its inclusion in the contract, and based its explanation on an interpretation of the parties' prior agreement. Chicago Transit Auth., 15 PERI ¶ 3018 (respondent's interpretation of its prior contracts demonstrated that its proffered interpretation of parties agreement was made in bad faith). The Respondent then stated a willingness to bargain over such a change, and solicited contract language on that subject. The Permanente Medical Group, Inc., 2016 WL 1743223 (parties' course of conduct indicated unambiguous intent to grant retroactive wage increases for all past years though written agreement referenced retroactive wage increases for only one specific year). When the Union offered its proposal on medical certification, it informed the Respondent that its proposal sought to "lock…down" that language, which the Respondent had clearly conveyed could be done only through its inclusion in the contract. The Respondent then agreed to the proposed language with the full understanding that the Union intended to secure the Respondent's adherence to it throughout the term of the agreement, but without informing the Union that it construed the parties' bargain differently. Bud's Cooling Corporation and Bud Antle, Inc., 138 NLRB at 601 (finding no ambiguity in recognition clause concerning coverage of employees at "mixed loading dock" where Respondent withheld from the Union its intent to move identified employees to a different dock); see also Paterson Bd. of Educ., 15 NJPER ¶ 20279 (NJ PERC 1989)(respondent's failure to express its understanding on face of the agreement that employees would not receive yearly incremental raises precluded later reliance on that interpretation, where parties past agreements had included such increments)[15]. Thus, the Respondent's claim of ambiguity is disingenuous where the parties conduct and statements left no question that the language would be included in the contract.

Indeed, the Respondent's failure to correct the Union's stated understanding of the parties' agreement underscores a finding of bad faith. If the agreement is ambiguous as the

[15] In this case, the New Jersey Public Employment Relations Commission (PERC) found the Respondent's particular interpretation of the parties' agreement to be in bad faith despite finding that the agreement, as written, contained some ambiguity.

Respondent now claims (it is not), that ambiguity was created by the Respondent's agents who failed to correct the Union's understanding of the agreement and failed to assert at any time during bargaining that they understood the Union's proposed language on this subject to appear solely in the Respondent's rules. Accordingly, the Respondent has "no right now to impose [its] own subjective meaning…when [it] knew that the contract would mean something else to the Union." Bud's Cooling Corporation and Bud Antle, Inc., 138 NLRB at 601. For this reason too, there is no merit to the Respondent's claim that the purported ambiguity must be construed against the Union simply because it drafted the agreement where, in this case, any alleged ambiguity was created by the Respondent.

The Respondent's remaining arguments in favor of the agreement's ambiguity are likewise unpersuasive. First, the agreement's failure to reference an article number does not undermine a finding that it was intended as contract language where not all the parties' proposals contained article numbers and where proposals for new language, at issue here, were often left unnumbered. Indeed, the second part of the parties' July 12, 2012 agreement likewise did not contain an article number, but the parties nevertheless included the language in their contract and added an article number later.

Second, there is no merit to the Respondent's claim that the agreement is ambiguous simply because the Respondent now asserts it would never have agreed to its terms. Indeed, the Respondent cites to no precedent to support its claim that such an assertion, standing alone, would create an ambiguity where the parties' conduct otherwise demonstrates a meeting of the minds. See also, discussion supra.

Finally, there is no merit to the Respondent's claim that the parties' post-agreement conduct renders the agreement ambiguous or indicates that the parties sought to modify only the Respondent's policy. The Respondent's modification of its policy shortly after the parties reached agreement does not inject ambiguity because it fails to demonstrate that the Respondent thereby discharged all its obligations under the agreement. Had the Respondent believed that it had fulfilled its obligations by modifying the policy, it reasonably would have objected to the Union's failure to perform its end of the bargain—to withdraw the grievance and charge. Yet, there is no evidence in the record that the Respondent objected to the Union's failure to withdraw the charge in July 2012 after the Respondent modified is policy, and indeed, the Board's file

remained open for another year and a half.[16] Moreover, it was not unusual for the Respondent to take action in accordance with its tentative agreements prior to ratification of the parties' contract, and there is insufficient evidence to support the suggestion that such action by the Respondent was unusual even prior to parties' completion of negotiations.[17] Thus, the evidence shows the Respondent understood that its modification of its policy did not conclude its obligations with respect to the agreed-upon medical certification language.

Furthermore, the Respondent's response to the Union's subsequent grievance over medical certification language confirms the Respondent's understanding that the parties agreed to include that language in the contract. The Union's March 2014 grievance expressed its understanding that the parties' July 11, 2012 agreement was an agreement to contract language. The Respondent never objected to this characterization and instead settled the grievance. PACE Northwest Division, Local 1028, 12 PERI ¶ 2010 (IL LRB-SP 1996)(union's failure to contest written statement that parties had reached agreement demonstrated that the parties had reached a meeting of the minds and that the Respondent's conduct in accordance with the agreement was not unilateral); Cf. County of Tazewell, 19 PERI ¶ 39 (IL SLRB 2003)(union's immediate objection to charging party-employer's response to its new overtime grievance supported the union's stated understanding that the parties had never settled the union's earlier overtime grievance).

Contrary to the Respondent's assertion, the Union's grievance outlined the Union's understanding with sufficient clarity such that the Respondent's failure to object to that understanding undermines the Respondent's claim that the parties' agreement was ambiguous. The Union grieved the Respondent's failure to adhere to the terms of the parties' the July 12, 2012 tentative agreement.[18] It alleged that the Respondent was requiring unit members to pay for their own doctor's visits to verify the legitimacy of a sick leave, though the terms of the

[16] I take administrative notice of the fact that the Board's Executive Director dismissed the charge (Case No. S-CA-12-105) for want of prosecution on January 9, 2014, after the Board inquired into the status of the underlying grievance arbitration and received no response.

[17] The Respondent asserts that Section 14 prohibits the Respondent from making unilateral changes during the pendency interest arbitration proceedings and that it could not have made the change to policy but for the Union's agreement. 5 ILCS 315/14(l). While this is a correct statement of law, it does little to resolve the question discussed above, of whether the Respondent was also required to include the agreed-upon language in the parties' agreement.

[18] At this time, the parties had not yet signed their new contract, but were operating under it nevertheless. There is no dispute that the Respondent had implemented all its terms, other than the one at issue here.

parties' agreement placed that economic burden on the Respondent. The collective bargaining agreement limits grievances to contractual matters, and the Union clearly referenced the language of the July 12, 2012 agreement as the basis for the contract violation it alleged. Yet, the Respondent never disclaimed a contractual obligation to follow its terms, as outlined by the Union. Instead, the Respondent settled the grievance and thereby expressed its understanding that the parties had negotiated to include the medical certification language in the contract. The Respondent's present claim, that the parties' agreement did not clearly require the inclusion of medical certification language in the contract, is unpersuasive because it conflicts with the Respondent's earlier silence and conduct. See PACE Northwest Division, Local 1028, 12 PERI ¶ 2010.

Thus, the Respondent repudiated the parties' agreement and the collective bargaining process when it refused to include the agreed-upon medical certification language in the parties' collective bargaining agreement.

V. CONCLUSIONS OF LAW

1. The Respondent repudiated the collective bargaining agreement and the collective bargaining process by refusing to include the parties' agreed-upon medical certification language in the parties' contract.

VI. RECOMMENDED ORDER

1. Cease and desist from:
   a. Failing and refusing to bargain collectively in good faith with Charging Party, International Association of Firefighters, Local 413, in connection with Respondent's failure to present, properly and expeditiously, for ratification and implementation, a collective bargaining agreement that includes the language addressing medical certification contained in the parties July 11, 2012 tentative agreement;
   b. In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them under the Illinois Labor Relations Act.
2. Take the following affirmative action designed to effectuate the policies of the Illinois Labor Relations Act:

a. Present, properly and expeditiously, for ratification and implementation, a collective bargaining agreement that includes the language addressing medical certification contained in the parties July 11, 2012 tentative agreement;
b. Post, for 60 consecutive days, at all places where notices to employees of the City of Rockford are regularly posted, signed copies of the attached notice. Respondent shall take reasonable steps to insure that the notices are not altered, defaced, or covered by any other material;
c. Notify the Board, in writing, within 20 days of the date of this order, of the steps that Respondent has taken to comply herewith.

VII. **EXCEPTIONS**

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with General Counsel Kathryn Zeledon Nelson of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 9th day of August, 2016

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge

NOTICE TO EMPLOYEES

FROM THE

ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-15-030

The Illinois Labor Relations Board, Local Panel, has found that the City of Rockford violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with Charging Party, International Association of Firefighters, Local 413, in connection with Respondent's failure to present, properly and expeditiously, for ratification and implementation, a collective bargaining agreement that includes the language addressing medical certification contained in the parties July 11, 2012 tentative agreement.

WE WILL cease and desist from interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in the Act.

WE WILL present, properly and expeditiously, for ratification and implementation, the parties' tentative agreement as it existed on July 11, 2012.

DATE _____ _____

City of Rockford

(Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor

Springfield, Illinois 62702

(217) 785-3155

160 North LaSalle Street, Suite S-400

Chicago, Illinois 60601-3103

(312) 793-6400

THIS IS AN OFFICIAL GOVERNMENT NOTICE

AND MUST NOT BE DEFACED.